

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

The petitioners entered into a Home Provider Agreement for M.C. on or about March 1, 2007. Under the terms of the

Home Provider Agreement, the petitioners are paid a monthly stipend of \$1,874.50 from the county mental health organization as compensation for housing, personal care and supports including twenty-four hour supervision, help with personal hygiene, medication administration, and transportation to appointments and activities. Under the terms of the above agreement, M.C. pays the petitioners room and board in the amount of \$425 per month.

The petitioners entered into a Home Provider Agreement for R.R. on or about April 15, 2007. Petitioners are paid a monthly stipend of \$1,874.50 as well as room and board of \$425 per month. The remaining provisions of said agreement are the same as the agreement for M.C.

In all, petitioners receive \$3,749 per month in stipends from the county mental health agency and \$850 per month in room and board from the two disabled adults.

3. Petitioner M.V. notified the Department about the contracts. The Department did not count the room and board payments as income. The Department added the income from A.V.'s employment and the income from both stipends. The total household income was \$4,839.39. The Department deducted the employment expense deduction of \$90 for each petitioner leaving countable income of \$4,659.39 which was in

excess of the VHAP maximum of \$1,712 for a two person household without minor children.

4. On or about July 31, 2007, the Department sent the petitioners a Notice of Decision that the petitioners' eligibility for VHAP would end on August 31, 2007. Petitioners promptly appealed and are in receipt of continuing benefits.

5. Petitioner M.V. appeared at the fair hearing and did not contest the amount of A.V.'s wages or the amount of stipends from the county mental health agency. M.V. testified that the two disabled adults should be considered part of her household and added to the VHAP group because their room and board does not cover all of the disabled adults' additional food and utility expenses. In addition, M.V. testified that she was informed by the Internal Revenue Service that the stipends from the county mental health agency were not taxable income.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Legislature created the Vermont Health Access Program (VHAP) to extend health insurance coverage to uninsured and underinsured low income Vermonters. In doing so, the Department received a waiver from the Health Care Financing Administration in 1996 that allowed the Department to ignore a household's resources and to expand the income eligibility limits for a household. W.A.M. § 4000.

Part of the VHAP eligibility process is determining household size. W.A.M. § 4001.8 states:

A VHAP group includes all of the following individuals if living in the same home:

- a. the VHAP applicant and his or her spouse;
- b. children under age 21 of the applicant or spouse;
- c. siblings under age 21, including half siblings and stepsiblings, of b.;
- d. parents, including a stepparent and adoptive parents of c., and
- e. children of any children in b. and c., and
- f. unborn children of any of the above.

The regulation's language demonstrates that the VHAP program looks at the family unit as the basis for determining household size. The rules do not envision the inclusion of

unrelated individuals as part of the household. The Department is correct in finding that the petitioners are a two person household.

The key step is determining whether the household falls within the VHAP income guidelines. The regulations intend that all of household's income be counted including unearned and earned income subject to certain deductions and exclusions. W.A.M. § 4001.81.

Petitioners argue that the payments from the county mental health agencies should not be counted as income. Petitioners correctly point out that the Internal Revenue Service does not consider these payments to be taxable income. The federal government uses tax policy to give incentives to individuals to care for disabled adults in order to avoid the costs and problems of institutionalization. However, the Department is not bound by another agency's interpretation of income.<sup>1</sup>

When adopting the VHAP regulations, the Department made a decision regarding the types of income to exclude as countable income. See W.A.M. § 4001.82. As a result, the

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<sup>1</sup> M.V. stated she was unsure whether they could continue caring for the two disabled adults if they lost their health insurance. Losing home care providers would be an unfortunate result but the VHAP regulations are quite specific leaving little, or no, room for flexibility.

room and board payments received by petitioners have been excluded from countable income. But, the stipends are not excluded and are considered self-employment income. See Fair Hearing No. 16,258.

When the Department recomputed eligibility, the Department applied the standard employment expense deduction of \$90 for each petitioner.<sup>2</sup> W.A.M. §§ 4001.81(c) and (e). The remaining income of \$4,659.39 greatly exceeded the program maximum of \$1,712 for a household of two. P-2420B. Accordingly, the Department was correct in terminating VHAP eligibility and their decision is affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 17.

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<sup>2</sup> The regulations allow certain business expenses to be deducted from self-employment income, but the Department had no record of any such expenses. Such expenses may include transportation expenses for client care, payment of respite care, etc. Given that the petitioners are \$2,947.39 over the VHAP income maximum, it is unlikely they would be able to show such expenses. But, they have the option of applying for future VHAP benefits and providing such documentation.